

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1015-PST-E TCEQ ID: RN1022277167 CASE NO.: 36127
RESPONDENT NAME: LOMETA DAVIS

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 511 South Divide, Eldorado, Schleicher County</p> <p>TYPE OF OPERATION: Former gas station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 4, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479</p> <p style="margin-left: 20px;">Respondent: Ms. Lometa Davis, P.O. Box 462, Eldorado, Texas 76936</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 12, 2008</p> <p>Date of NOE Relating to this Case: June 20, 2008</p> <p>Background Facts: The EDRP was filed on December 2, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDRP.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to permanently remove from service, no later than 60 days after prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, Ms. Davis' three USTs were not brought into timely compliance with upgrade requirements and were not permanently removed. [30 TEX. ADMIN. CODE § 334.47(a)(2)]. Failed to update self-certification registration to reflect changes to the system. Specifically, registration was not updated to reflect the current status of the three USTs. [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$17,600</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$17,600</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST system from service. Within 30 days, submit a self certification registration to reflect changes to the UST system. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	23-Jun-2008	Screening	27-Jun-2008	EPA Due	
	PCW	20-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Lometa Davis
Reg. Ent. Ref. No.	RN102277167
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36127	No. of Violations	2
Docket No.	2008-1015-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$16,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 10.0% Enhancement Subtotals 2, 3, & 7 \$1,600

Notes: The Respondent received two NOVs with the same or similar violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$401
Approx. Cost of Compliance \$10,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$17,600

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$17,600

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$17,600

DEFERRAL 0.0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY \$17,600

Screening Date 27-Jun-2008

Docket No. 2008-1015-PST-E

PCW

Respondent Lometa Davis

Policy Revision 2 (September 2002)

Case ID No. 36127

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102277167

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
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NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received two NOVs with the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 27-Jun-2008 Respondent Lometa Davis Case ID No. 36127 Reg. Ent. Reference No. RN102277167 Media [Statute] Petroleum Storage Tank Enf. Coordinator Danielle Porras Violation Number 1	Docket No. 2008-1015-PST-E	PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>															
Rule Cite(s) 30 Tex. Admin. Code § 334.47 (a)(2)																	
Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three underground storage tanks ("USTs") for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, as documented during an investigation conducted on May 12, 2008. Specifically, the Respondent owns the property at 511 South Divide, Eldorado, Texas, which has three USTs that were not brought into timely compliance with the upgrade requirements, and had not been permanently removed.																	
Base Penalty		\$10,000															
>> Environmental, Property and Human Health Matrix																	
OR	<table border="1" style="margin: auto;"> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Harm</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> <td></td> </tr> </table>	Release	Major	Harm	Moderate	Minor	Actual					Potential	x				Percent 25%
	Release	Major	Harm	Moderate	Minor												
	Actual																
Potential	x																
>> Programmatic Matrix																	
	<table border="1" style="margin: auto;"> <tr> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Falsification	Major	Moderate	Minor					Percent 0%							
Falsification	Major	Moderate	Minor														
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed protective levels.																
Adjustment		\$7,500															
		\$2,500															
Violation Events																	
Number of Violation Events 6		Number of violation days 46															
mark only one with an x	<table border="1" style="margin: auto;"> <tr><td style="text-align: center;">daily</td><td></td></tr> <tr><td style="text-align: center;">monthly</td><td style="text-align: center;">x</td></tr> <tr><td style="text-align: center;">quarterly</td><td></td></tr> <tr><td style="text-align: center;">semiannual</td><td></td></tr> <tr><td style="text-align: center;">annual</td><td></td></tr> <tr><td style="text-align: center;">single event</td><td></td></tr> </table>	daily		monthly	x	quarterly		semiannual		annual		single event		Violation Base Penalty \$15,000			
daily																	
monthly	x																
quarterly																	
semiannual																	
annual																	
single event																	
Six monthly events (two months per UST) are recommended based on documentation of the violation during the May 12, 2008 investigation date to the June 27, 2008 screening date.																	
Good Faith Efforts to Comply		0.0% Reduction \$0															
<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;"></td> <td style="width: 30%; text-align: center;">Before NOV</td> <td style="width: 40%; text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>				Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)			
	Before NOV	NOV to EDPRP/Settlement Offer															
Extraordinary																	
Ordinary																	
N/A	x	(mark with x)															
Notes The Respondent does not meet the good faith criteria for this violation.																	
Violation Subtotal		\$15,000															
Economic Benefit (EB) for this violation		Statutory Limit Test															
Estimated EB Amount \$396		Violation Final Penalty Total \$16,500															
		This violation Final Assessed Penalty (adjusted for limits) \$16,500															

Economic Benefit Worksheet

Respondent Lometa Davis
Case ID No. 36127
Reg. Ent. Reference No. RN102277167
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	12-May-2008	25-Feb-2009	0.79	\$396	n/a	\$396

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$396

Screening Date 27-Jun-2008 Respondent Lometa Davis Case ID No. 36127 Reg. Ent. Reference No. RN102277167 Media [Statute] Petroleum Storage Tank Enf. Coordinator Danielle Porras Violation Number <input type="text" value="2"/> Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 334.7 (d)(3)"/> Violation Description <input type="text" value="Failed to update self-certification registration to reflect changes to the system. Specifically, registration was not updated to reflect the current status of the three USTs."/>	Docket No. 2008-1015-PST-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>																				
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N/A	x	(mark with x)																			
Notes The Respondent does not meet the good faith criteria for this violation.																					
Violation Subtotal <input type="text" value="\$1,000"/>																					
Economic Benefit (EB) for this violation																					
Statutory Limit Test																					
Estimated EB Amount <input type="text" value="\$6"/>	Violation Final Penalty Total <input type="text" value="\$1,100"/>																				
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,100"/>																					

Economic Benefit Worksheet

Respondent Lometa Davis
Case ID No. 36127
Reg. Ent. Reference No. RN102277167
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	12-May-2008	25-Feb-2009	0.79	\$0	\$5	\$6
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$6

Compliance History

Customer/Respondent/Owner-Operator: CN603384611 Lometa Davis Classification: AVERAGE Rating: 4.00
 Regulated Entity: RN102277167 TEXACO STATION S DIVIDE Classification: AVERAGE Site Rating: 4.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 1920
 Location: 511 South Divide, Eldorado, Schleicher County Rating Date: September 01 07 Repeat Violato
 NO
 TCEQ Region: REGION 08 - SAN ANGELO
 Date Compliance History Prepared: August 05, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: August 05, 2003 to August 05, 2008
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Danielle Porras Phone: (512) 239-2602

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 05/18/2006 (466411)
 N/A

2 08/02/2006 (489800)
 3 06/20/2008 (671306)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/19/2006 (466411)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to upgrade system to meet technical requirements 30 TAC 334.49(a).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to update self-certification registration to reflect changes to the system.

Date: 08/02/2006 (489800)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to upgrade system to meet technical requirements 30 TAC 334.49(a).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to update self-certification registration to reflect changes to the system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LOMETA DAVIS;
RN102277167**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1015-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Lometa Davis ("Ms. Davis").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Ms. Davis owns a site formerly used as a gas station located at 511 South Divide, Eldorado, Schleicher County, Texas (the "Site").
2. Ms. Davis' three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Davis' USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on May 12, 2008, a TCEQ San Angelo Regional Office investigator documented that Ms. Davis:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, Ms. Davis' three USTs were not brought into timely compliance with the upgrade requirements and were not permanently removed.
 - b. Failed to update self-certification registration to reflect changes to the system. Specifically, registration was not updated to reflect the current status of the three USTs.

4. Ms. Davis received notice of the violations on or about June 25, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lometa Davis" (the "EDPRP") in the TCEQ Chief Clerk's office on December 2, 2008.
6. By letter dated December 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Davis with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Davis received notice of the EDPRP.
7. More than 20 days have elapsed since Ms. Davis received notice of the EDPRP, provided by the Executive Director. Ms. Davis failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. Davis is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Ms. Davis failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Ms. Davis failed to update self-certification registration to reflect changes to the system, in violation 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Ms. Davis with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Ms. Davis failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Davis and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Davis for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of seventeen thousand six hundred dollars (\$17,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Ms. Davis is assessed an administrative penalty in the amount of seventeen thousand six hundred dollars (\$17,600.00) for violations of the Texas Water Code, and the rules of the TCEQ. The payment of this administrative penalty and Ms. Davis' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Lometa Davis; Docket No. 2008-1015-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Ms. Davis shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Ms. Davis shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 30 days after the effective date of this Order, Ms. Davis shall submit a self-certification registration to reflect changes to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7.
- c. Within 45 days after the effective date of this Order, Ms. Davis shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Ms. Davis shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mark Newman, Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 S. Oakes, Ste. K
San Angelo, Texas 76903-7035

- 3. All relief not expressly granted in this Order is denied.
- 4. The provisions of this Order shall apply to and be binding upon Ms. Davis. Ms. Davis is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Ms. Davis fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Davis' failure to comply is not a violation of this Order. Ms. Davis shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Davis shall notify the Executive Director within seven days after Ms. Davis becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Davis shall be made in writing to the Executive Director. Extensions are not effective until Ms. Davis receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Davis if the Executive Director determines that Ms. Davis has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TOMMY TUCKER HENSON II

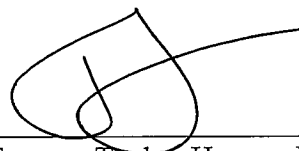
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Tommy Tucker Henson II. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lometa Davis" (the "EDPRP") was filed with the Office of the Chief Clerk on December 2, 2008.

The EDPRP was mailed to Ms. Davis at her last known address on December 2, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Davis received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

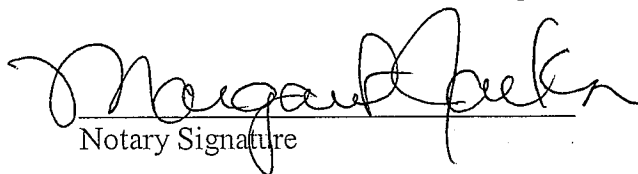
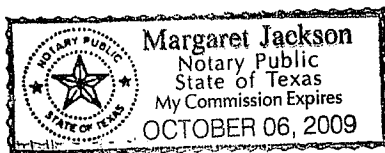
More than 20 days have elapsed since Ms. Davis received notice of the EDPRP. Ms. Davis failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Tommy Tucker Henson II, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tommy Tucker Henson II, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 19 day of February, 2009.



Notary Signature